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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,978	11/04/2003	Stanley Z. Baker	BZ0494US (#90168)	4486
7590	08/09/2005		EXAMINER	
D. Peter Hochberg D. Peter Hochberg Co., L.P.A. 6th Floor 1940 East 6th Street Cleveland, OH 44114			HOGAN, JAMES SEAN	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 08/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/700,978	BAKER, STANLEY Z.
	Examiner James S. Hogan	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 04 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 7-14 is/are rejected.
- 7) Claim(s) 5 and 6 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/04/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION*****Claim Objections***

Claim 4 is objected to under 37 CFR 1.75(d) as being in improper for failing to conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The specification does not support corresponding language for a "rim" when teaching the removable cap in claim 4.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 recites the limitation "said rim" in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "said congealing substance" in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "said essential oil" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "of said at least two compartments" in line 12 of the claim. There is insufficient antecedent basis for this limitation in the claim. The preamble of claim 12 only outlines a singular compartment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No. 6,57,579 to Harris in view of U.S Patent No 3,888,416 to Lin and U.S Patent No. 5,231,246 to Benson et al. and further in view of U.S Patent 5,782,409 to Paul

Regarding claim 1 and 14 Harris teaches a device for holding an odor-producing repellent having two oppositely disposed compartments (12) for holding a scent, each compartment having an annular ridge (16), including a circular sidewall extending downwardly from said ridge to a floor at the bottom of each compartment (not numbered). Harris ('579) does not teach at least one slot between said ridge and said sidewall for scent dispersal purposes. Lin ('416) teaches slots (32) in the sidewall of a housing (31) for scent dispersal. As per claim 10, the device of Harris can be hung from a tree branch (See Fig. 9). However, Harris ('579) does not teach a pair of substantially parallel strips extending outwardly from the two compartments. Benson et al., teaches such a parallel strip arrangement in order to bind cables and the like. With the strips of Benson et al. as per claim 11, a modified device of Harris would be able to be

secured to a tree by twisting one of the compartments on the strips and placing it through the space defined by the area between two parallel strips. As per claim 7 and 8, the parallel strips of Benson et al. ('246) are made of a flexible nylon (Col. 5, lines 22-23). As per claim 9, the pods of Harris ('579) feature nodules for anchoring a scent source (18). Additionally, as per claim 13, the device of Harris is capable of containing pest repellent, and it is understood that this could be either pest that are either animal or insect (Col. 8, line 5-7). As for claim 2 and 12, Harris teaches that a scent-impregnated material can be used (Col. 7, line 8), and this material could be an impregnated (with oil) paraffin, which is common in scent dispersing. Harris does not teach the use of Cymbopgen flexuosis as an essential oil for the impregnated paraffin. Paul ('409) teaches the use of lemongrass (Cymbopgen flexuosis) as a desired scent dispersing oil for use with an air freshening and deodorizing system (Col. 19, line 36). It would have been obvious to one skilled in the art at the time the invention was made to have modified the scent producing device of Harris with the scent dispersing slots of Lin ('416) and the straps of Benson et al. ('246) and the lemongrass scent as taught by Paul ('409) in order to produce a scent-emitting device that can hang suspended from tree branches and repel animals.

As for Claim 3, the choice of shape a pod is to take is clearly one of design choice, as it has been found that it would be obvious to one having ordinary skill in the art at the time the invention was made to have shaped the pods in as a ovoid, oval, circle, triangle, etc. since use of such means in lieu of

any other shape shown in the references solves no stated problem and would be an obvious matter of design choice within the skill of the art.

***Allowable Subject Matter***

Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is as follows:

U.S. Patent No. 5,611,165 to Blaha, disclosing a scent holder

U.S. Patent No. 6,367,706 to Putz, disclosing a scent holder

U.S. Patent No. 6,085,989 to Cox, disclosing a scent dispenser

U.S. Patent No. 2,959,354 to Beck, disclosing a buck lure

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH  
08/0/2005



**David A. Scherbel**  
**Supervisory Patent Examiner**  
**Group 3700**